

REMARKS

This paper is submitted in response to the pending Office Action mailed on February 10, 2006. Because this Response is submitted with a certificate of mailing in compliance with 37 C.F.R. §1.8 on or before the shortened period for reply set to expire on **May 10, 2006**, this Response is timely filed.

I. INTERVIEW SUMMARY

Applicants wish to thank Examiner Hayes for the help and cooperation afforded Applicants' representative Matthew T. Ridsdale, Reg. No. 56,832, during their personal interview conducted on April 25, 2006 (a copy of the form PTOL-413 Interview Summary is attached herewith). Applicants' representative and Examiner Hayes discussed the proposed amendments and the pending rejections. Applicants' representative and Examiner Hayes agreed that the proposed amendments appeared to clearly distinguish the patentable subject matter over the cited references or any combination of these references, and clarified the subject matter originally presented and inherent to these pending claims. In light of these clarifying amendments and the remarks presented herein, Applicants submit that claims 8 to 12, and new claim 56 and 57, are now in condition for allowance.

II. STATUS OF THE CLAIMS

Claims 8 to 12 are pending and issue in the present application, with claims 1 to 7 and 13 to 55 having been canceled without disclaimer in the Response dated January 4, 2006. As previously asserted, Applicants expressly maintain the right to file those claims in one or more continuing applications. New independent claims 56 and 57 have been added to further recite and clarify the patentable subject matter originally disclosed within this application. Applicants submit that no new matter has been added via these amendments and new claims, and that no additional searching is likely to be necessary because these claims represent subject matter and concepts addressed during the course of the previous searches. Thus claims 8 to 12, 56 and 57 are now pending and at issue in the present application.

While Applicants believe that no additional fees are due in connection with this application, Applicants direct and authorize that **Deposit Account No. 02-1818** be charged for any fees deemed owed during the pendency of this application, excluding the issue fee.

III. CLAIMS REJECTIONS

The Office Action rejects claims 8 to 12 under 35 U.S.C. § 103(a) as obvious¹ over U.S. Application 2003/0004470 to Hickerson ("*Hickerson*") in view of U.S. Patent No. 5,382,805 to Fannon et al. ("*Fannon*") and U.S. Patent No. 6,261,261 to Gordon ("*Gordon*").

Applicants respectfully traverse the rejections of claims 8 to 12 as obvious over any combination of *Hickerson*, *Fannon* and/or *Gordon*. In particular, as discussed during the personal interview summarized in Section I, the cited references do not: (i) provide the necessary suggestion or motivation to make the alleged modification or combination, and/or (ii) teach or suggest each and every element or claim limitation recited in the claims. Because the cited references do not establish a *prima facie* case of obviousness, Applicants submit that claims 8 to 12, 56 and 57 are patentable over these references or any combination thereof.

IV. CONCLUSION

For the foregoing reasons, Applicants respectfully submit that the above-identified patent application is now in condition for allowance and earnestly solicit allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY: 

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Dated: **May 1, 2006**

¹ To establish a *prima facie* case of obviousness, three basic criteria must be met.:

- (1) First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.
- (2) Second, there must be a reasonable expectation of success.
- (3) Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP §2143 - §2143.03 for decisions pertinent to each of these criteria.

Interview Summary

Application No.

10/051,609

Applicant(s)

LAUMAN ET AL.

Examiner

Michael J. Hayes

Art Unit

3767

All participants (applicant, applicant's representative, PTO personnel):

(1) Michael J. Hayes.

(3) _____

(2) Matt Ridsdale.

(4) _____

Date of Interview: 25 April 2006.

Type: a) ☐ Telephonic b) ☐ Video Conference

c) ☒ Personal [copy given to: 1) ☐ applicant 2) ☒ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.

If Yes, brief description: _____

Claim(s) discussed: 8-10

Identification of prior art discussed:

Hickerson, Fannon, & Gordon

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

Applicant is planning to amend claims 8 and 10 to more particularly point out position of disposable cassette to the emitter & reflector and consistency in claim 10 with claim 8. Applicant will consider amending claims to point out plate heater arrangement with the heater.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Michael J. Hayes
Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.